

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

**UNITED STATES OF AMERICA and
STATE OF LOUISIANA,**

Plaintiffs,

v.

CITGO PETROLEUM CORPORATION,

Defendant.

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) **Civil Action No.** _____
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) **Judge** _____
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COMPLAINT

Plaintiffs, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Louisiana through the undersigned attorney, acting at the request of the Louisiana Department of Environmental Quality (“LDEQ”), file this complaint and allege as follows:

NATURE OF THE ACTION

1. This civil action asserts claims against defendant CITGO Petroleum Corporation (“Defendant”) for penalties and injunctive relief under the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1251 et seq., as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., and for penalties and costs under the Louisiana Environmental Quality Act, La. R.S. 30:2001 et seq. This action relates to the discharge of at least 53,000 barrels (approximately 2.2 million gallons) of slop oil into and upon navigable waters of the United States, waters of the

State of Louisiana, and adjoining shorelines from Defendant's CITGO Lake Charles Refinery in Calcasieu Parish, Louisiana. Defendant's slop oil discharged from two storage tanks and a containment berm at the refinery's waste water treatment area located along the Calcasieu Ship Channel on June 19 and 20, 2006. Defendant's slop oil flowed into the Indian Marais waterway, the Calcasieu River, the Calcasieu Ship Channel, and other contiguous water bodies and shorelines.

JURISDICTION, AUTHORITY, AND VENUE

2. This Court has jurisdiction over the United States' claims pursuant to Sections 309(b), 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. §§ 1319(b), 1321(b)(7)(E) and (n), and 28 U.S.C. §§ 1331, 1345, 1355, and over LDEQ's claims pursuant to 28 U.S.C. § 1367(a) (supplemental jurisdiction). The Court has personal jurisdiction over the parties.

3. Authority to bring the United States' claims is vested in the United States Department of Justice by, inter alia, Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

4. Venue is proper in the Western District of Louisiana under Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395 because the claims arose in this district and Defendant is located and doing business in this district.

DEFENDANT

5. Defendant CITGO Petroleum Corporation is a Delaware Corporation with its headquarters in Houston, Texas.

6. At all times relevant to this action, Defendant owned and operated the CITGO

Lake Charles Refinery and the storage tanks and containment berm from which oil was discharged. The refinery is located south of Lake Charles along the Calcasieu River and Ship Channel.

STATUTORY FRAMEWORK FOR FEDERAL CWA CLAIMS

Federal Authority for Civil Penalties

7. Section 311(b) of the CWA prohibits the “discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States [and] adjoining shorelines . . . in such quantities as may be harmful,” 33 U.S.C. § 1321(b)(3), “to the public health or welfare or the environment of the United States,” 33 U.S.C. § 1321(b)(4). This prohibition supports the national objective “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

8. Pursuant to its authority under the CWA, EPA has promulgated regulations that define quantities of oil that “may be harmful” to include quantities that “[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.” 40 C.F.R. § 110.3.

9. Section 311(b)(7)(A) of the CWA mandates that “[a]ny person who is the owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty.” 33 U.S.C. § 1321(b)(7)(A).

10. Section 311(b)(7)(A) of the CWA establishes the civil penalty for violations of Section 311(b)(3) as \$32,500 per day of violation or an amount up to \$1,100 per barrel discharged. 33 U.S.C. § 1321(b)(7)(A); 40 C.F.R. § 19.4 (2006) (codifying that the civil penalty

amounts under Section 311(b)(7) are set at the listed amounts by the Civil Monetary Penalty Inflation Adjustment Rule, effective March 15, 2004).

11. Where the violation is the result of gross negligence or willful misconduct, the per barrel penalty is an amount up to \$4,300 per barrel discharged. 33 U.S.C. §1321(b)(7)(D); 40 C.F.R. § 19.4.

12. Pursuant to Section 311(s) of the CWA, 33 U.S.C. § 1321(s), amounts received by the United States for actions under Section 311 shall be deposited in the “Oil Spill Liability Trust Fund” established under 26 U.S.C. § 9509 to, inter alia, fund cleanups of future discharges and substantial threats of discharges of oil.

Federal Authority for Injunctive Relief

13. Section 301(a) of the CWA prohibits “the discharge of any pollutant by any person,” except in compliance with enumerated sections not applicable here. 33 U.S.C. § 1311(a).

14. Section 502(5) of the CWA defines the term “person” to include individuals and corporations. 33 U.S.C. § 1362(5).

15. Section 502(12) of the CWA defines the term “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

16. The definition of “pollutant” in Section 502(6) of the CWA encompasses oil. 33 U.S.C. § 1362(6).

17. Section 502(14) of the CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel

or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

18. Section 309(b) of the CWA is the enforcement provision for Section 301 and authorizes civil actions for “appropriate relief, including a permanent or temporary injunction.” 33 U.S.C. § 1319(b).

STATUTORY FRAMEWORK FOR STATE CLAIMS

State Authority for Civil Penalties and Cost Recovery

19. La. R.S. 30:2076(A)(1) prohibits the discharge into any waters of the State of: “(a) Any waste or any other substance of any kind that will tend to cause water pollution in violation of any rule, order, or regulation; or (b) Any substance, the discharge of which violates any term, condition, or limit imposed by a permit.”

20. La. R.S. 30:2076(A)(3) prohibits the violation by any person of “any rule or regulation adopted under this Chapter or the terms of any permit or order issued under authority of this Subtitle.”

21. Discharges from Defendant’s Lake Charles Refinery are further regulated by Louisiana Pollutant Discharge Elimination System (“LPDES”) permit LA0005941.

22. LAC 33:IX.501.A states: “Failure to comply with any of the provisions of these regulations or of the terms and conditions of any permit granted or order issued hereunder constitutes a violation of the act.”

23. LAC 33:IX.1111 provides that “secondary contact recreation” is a designated water use for surface waters in Louisiana. This type of use includes fishing, wading, and boating.

24. LAC 33:IX.1113.B.6 states: “Free or floating oil . . . shall not be present in

quantities large enough to interfere with the designated water uses, nor shall emulsified oils be present in quantities large enough to interfere with the designated uses.”

25. LAC 33:IX.2701.A states: “The [LPDES] permittee must comply with all conditions of [the] permit.”

26. 33:IX.2701.E mandates that an LPDES “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”

27. La. R.S. 30:2025(E)(1)(a) authorizes civil penalties “of not more than the cost to the state of any response action made necessary by such violation which is not voluntarily paid by the violator, and a penalty of not more than [\$32,500] for each day of violation. However, when any such violation is done intentionally, willfully, or knowingly, or results in a discharge or disposal which causes irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, such person may be liable for an additional penalty of not more than [\$1,000,000].”

CAUSES OF ACTION

Claim No. 1: Federal Civil Penalties for Violation of Section 311 of the Clean Water Act

28. Paragraphs 1 through 18 are realleged and incorporated herein by reference.

29. On June 19 and 20, 2006, at least 53,000 barrels of slop oil discharged into the Indian Marais waterway and the Calcasieu River and Ship Channel from two storage tanks and a containment berm at Defendant’s refinery. The tanks and berm were part of Defendant’s waste water treatment system located along the Calcasieu River and Ship Channel. Two storage tanks

overflowed and spilled at least 99,000 barrels of oil into the surrounding containment berm. The containment berm leaked and released at least 53,000 barrels of oil to the Indian Marais and the Calcasieu River and Ship Channel. The spill forced the closure of the Calcasieu River and Ship Channel, Prien Lake, Moss Lake, the Intracoastal Waterway, and Calcasieu Lake.

30. Defendant is a “person” within the meaning of Sections 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

31. Defendant is the “owner” and “operator” of an onshore facility from which oil was discharged within the meaning of Section 311(a)(6), 33 U.S.C. § 1321(a)(6).

32. Defendant’s refinery, storage tanks, and containment berm where the discharge occurred were each an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

33. The spilling of oil from the storage tanks and the berm each constituted a “discharge” of oil within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

34. The discharge was of “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

35. The discharged oil spilled into or upon “navigable waters” of the United States within the meaning of Sections 311 and 502(7) of the CWA, 33 U.S.C. §§ 1321 and 1362(7), or “adjoining shorelines” within the meaning of Section 311, 33 U.S.C. § 1321. The discharged oil flowed into the Indian Marais and from there into the Calcasieu River and Ship Channel and beyond. The Indian Marais is adjacent to and flows into the Calcasieu River.

36. The discharge into or upon navigable waters of the United States or adjoining shorelines was in a quantity “as may be harmful” within the meaning of Section 311(b)(3) of the

CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3. The discharge resulted in the presence of oil and oil sheen on water and caused oil staining on the adjoining shoreline and marshes along the river.

37. The discharge of oil was a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

38. As a result of Defendant's violation of Section 311(b)(3) of the CWA, Defendant is liable under Section 311(b)(7)(A) for a civil penalty of up to \$1,100 per barrel discharged, or, if it is established that the violation is the result of gross negligence or willful misconduct, a penalty of up to \$4,300 per barrel discharged under Section 311(b)(7)(D).

Claim No. 2: Injunctive Relief Under Sections 301 and 309 of the Clean Water Act

39. Paragraphs 1 through 18 and Paragraphs 29 through 38 are realleged and incorporated herein by reference.

40. The discharge described above violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Defendant is subject to appropriate injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

Claim No. 3: State Civil Penalties for Violations of Louisiana Environmental Quality Act

41. Paragraphs 1 through 6, 19 through 27, and 29 are realleged and incorporated herein by reference.

42. Defendant's unauthorized discharge of oil and wastewater that occurred on June 19 and 20, 2006 constitutes violations of La. R.S. 30:2076(A)(1) and (A)(3), LAC 33:IX.501A, LAC 33:IX.2701.A, and Defendant's LPDES permit.

43. Defendant failed to properly operate and maintain its wastewater treatment and

control facilities, including its oil skimming system, for approximately ten years prior to the spill in violation of La. R.S. 30:2076(A)(1) and (A)(3), LAC 33:IX.501A, LAC 33:IX.2701.A, LAC 33:IX.2701.E, and Defendant's LPDES permit.

44. Defendant's unauthorized discharge, as set forth in this complaint, forced the closure of a portion of the Calcasieu River Ship Channel to shipping on or about June 21, 2006. Boating, which is a designated secondary contact usage of this water body, was hindered by the presence of free or floating oil. Defendant's interference with a designated use of a waterbody due to the presence of free or floating oil was in violation of La. R.S. 30:2076(A)(1) and (A)(3), LAC 33:IX.501A, and LAC 33:IX.1113.B.6.

45. As a result of Defendant's violations, Defendant is liable under La. R.S. 30:2025 for a civil penalty of not more than the cost to the State of any response action made necessary by these violations which is not voluntarily paid by the violator, and a penalty of not more than \$32,500 for each day of violation, and, if it is established that any violation was done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which caused irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, defendant may be liable for an additional penalty of not more than \$1,000,000.

Claim No. 4: State Recovery of Response Action Costs as of May 1, 2008

46. Paragraphs 1 through 6, 19 through 27, 29, and 42 through 45 are realleged and incorporated herein by reference.

47. The State has incurred response action costs associated with the discharge. None of these costs has been paid by Defendant to date.

48. Pursuant La. R.S. 30:2025, Defendant is liable to the State for the State's response action costs incurred in responding to the discharge.

REQUEST FOR RELIEF

WHEREFORE, the United States of America and the State of Louisiana respectfully request that this Court:

A. Enter judgment against Defendant and award the United States civil penalties in an amount up to \$1,100 per barrel of oil discharged for the discharge alleged above, or if it is established that the discharge was the result of gross negligence or wilful misconduct, in an amount up to \$4,300 per barrel discharged;

B. Issue an order pursuant to the CWA requiring Defendant to take all appropriate action to prevent future discharges of oil into waters of the United States;

C. Enter judgment against Defendant and award the State of Louisiana its unpaid response action costs, civil penalties of not more than \$32,500 for each day of violation, and, if it is established that the violations were done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which caused irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, an additional penalty of not more than \$1,000,000.

D. Grant the United States and the State of Louisiana such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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